

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
DUBLIN DIVISION

ORLANDO JEFFERSON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CV 323-055
	)	
WHEELER CORRECTIONAL FACILITY;	)	
GEORGIA DEPARTMENT OF	)	
CORRECTIONS; CORE CIVIC	)	
SECURITY; SHERRY SHEPARD;	)	
DOCTOR NEAU; and C/O SPIKES,	)	
	)	
Defendants.	)	

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**MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION**

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Plaintiff, an inmate at Wheeler Correctional Facility (“Wheeler”) in Alamo, Georgia, seeks to proceed *in forma pauperis* (“IFP”) in this action filed pursuant to 42 U.S.C. § 1983. For the reasons set forth below, the Court **REPORTS** and **RECOMMENDS** Plaintiff’s request to proceed IFP be **DENIED**, (doc. no. 7), and this action be **DISMISSED** without prejudice.

**I. BACKGROUND**

A prisoner attempting to proceed IFP in a civil action in federal court must comply with the mandates of the Prison Litigation Reform Act (“PLRA”), Pub. L. No. 104-134, §§ 801-810, 110 Stat. 1321 (1996). 28 U.S.C. § 1915(g) of the PLRA provides:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is

frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

“This provision of the PLRA, commonly known as the three strikes provision, requires frequent filer prisoners to prepay the entire filing fee before federal courts may consider their lawsuits and appeals.” Rivera v. Allin, 144 F.3d 719, 723 (11th Cir. 1998) (internal citations omitted), *abrogated on other grounds by* Jones v. Bock, 549 U.S. 199 (2007); *see also* Lomax v. Ortiz-Marquez, 140 S. Ct. 1721, 1726 (U.S. 2020) (“The point of the PLRA, as its terms show, was to cabin not only abusive but also simply meritless prisoner suits.”). The Eleventh Circuit has upheld the constitutionality of § 1915(g) because it does not violate an inmate’s right to access the courts, the doctrine of separation of powers, an inmate’s right to due process of law, or an inmate’s right to equal protection. Rivera, 144 F.3d at 721-27.

## II. DISCUSSION

### A. Dismissal Is Warranted Because Plaintiff Has Three Strikes Under § 1915(g)

A review of Plaintiff’s history of filings reveals he has brought at least three cases that were dismissed and count as strikes: (1) Jefferson v. Merritt, Civ. Act. No. 123-CV-1371 (N.D. Ga. July 25, 2023) (dismissed for failure to state claim); (2) Jefferson v. State of Georgia, et al., Civ. Act. No. 123-CV-1370 (N.D. Ga. July 25, 2023) (dismissed for failure to state claim); and (3) Jefferson v. Jackson Cnty. Correctional Facility, et al., Civ. Act. No. 223-CV-0048 (N.D. Ga. July 18, 2023) (dismissed for failure to state claim and as frivolous). Because Plaintiff has at least three strikes, he cannot proceed IFP unless he can demonstrate he qualifies for the “imminent danger of serious physical injury” exception to § 1915(g). *See* Mitchell v. Nobles, 873 F.3d 869, 873 (11th Cir. 2017).

**B. Plaintiff Does Not Qualify for the Imminent Danger Exception**

In order to come within the imminent danger exception, a prisoner must be in imminent danger at the time he files suit in district court, not at the time of the alleged incident that serves as the basis for the complaint. Medberry v. Butler, 185 F.3d 1189, 1193 (11th Cir. 1999). General or conclusory allegations are “insufficient to invoke the exception to § 1915(g) absent specific fact allegations of ongoing serious physical injury, or of a pattern of misconduct evidencing the likelihood of imminent serious physical injury.” Sutton v. Dist. Attorney’s Office, 334 F. App’x 278, 279 (11th Cir. 2009) (*per curiam*) (citing Brown v. Johnson, 387 F.3d 1344, 1350 (11th Cir. 2004)).

Plaintiff complains of an incident that took place while out on a work detail on July 31, 2022. (See generally doc. no. 1.) His tractor allegedly malfunctioned and he continued working, but while on break, his back “felt dislocated from [his] hips.” (Id. at 4.) Plaintiff received X-rays and was given medication but claims he did not receive the X-ray results or “doctors recommendations” by the medical staff at Coffee County Correctional Facility or Wheeler. (Id. at 5.) None of these allegations show he is in imminent danger of serious physical injury.

To the extent Plaintiff alleges he needs to be seen by additional doctors because of this incident, he provides no details about any underlying medical condition(s) or diagnoses, let alone provides any information about any other type of medical treatment he has received. (See generally doc. no. 1.) At best, Plaintiff describes this incident, admits he was seen by medical, and wishes to see additional doctors. (Id.) Thus, although Plaintiff may prefer more advanced treatment, the record does not support a conclusion he has been denied all manner of medical treatment. Rather, he complains that he has been deprived of a certain type of treatment and/or doctors that he believes he needs. Thus, by his own admission, Plaintiff has

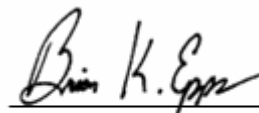
not been denied care. Cf. Brown, 387 F.3d at 1350 (recognizing exception satisfied where “total withdrawal of treatment for serious diseases, as a result of which [the plaintiff] suffers from severe ongoing complications,” makes the plaintiff more susceptible to various illnesses and rapid health deterioration).

In sum, Plaintiff’s general and conclusory allegations do not satisfy the imminent danger exception. See Odum v. Bryan Cnty. Judicial Circuit, No. CV 4:07-181, 2008 WL 766661, at \*1 (S.D. Ga. Mar. 20, 2008) (requiring specific allegations grounded in specific facts indicating injury is imminent). Thus, Plaintiff fails to demonstrate he should be excused from paying the full filing fee under the “imminent danger” exception to § 1915(g)’s three strike rule.

### III. CONCLUSION

In sum, Plaintiff has accumulated at least three strikes against him and cannot satisfy the dictates of the “imminent danger” exception of § 1915(g). Thus, he fails to demonstrate that he should be excused from paying the full filing fee. Therefore, the Court **REPORTS** and **RECOMMENDS** Plaintiff’s request to proceed IFP be **DENIED**, (doc. no. 7), and this action be **DISMISSED** without prejudice. If Plaintiff wishes to proceed with the claims raised in this case, he should be required to initiate a new lawsuit, which would require submission of a new complaint. Dupree v. Palmer, 284 F.3d 1234, 1236 (11th Cir. 2002).

SO REPORTED and RECOMMENDED this 9th day of August, 2023, at Augusta, Georgia.

  
 BRIAN K. EPPS  
 UNITED STATES MAGISTRATE JUDGE  
 SOUTHERN DISTRICT OF GEORGIA